IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6191 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAPICUT CARBIDES LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 6191 of 2002

MR MIHIR H JOSHI for Petitioner No. 1-2

MR DN PATEL for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 11/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

Rule. Service of rule is waived by Mr. D.N. Patel, learned Senior Standing Counsel for the Central Government. With the consent of both the sides, the petition is finally heard today.

2. The petitioners have filed an appeal before the CEGAT along with an application for waiver of pre-deposit of duty and penalty. On 9th August 1996, the said application was allowed, and while allowing the same, it was observed by the Tribunal that "considering the submission, prima facie there appears to be a strong case in favour of the appellants on the limitation aspect, as there is no overt act of suppression or mis-statement on their part."

3. However, while deciding the appeal vide order dated 10th January 2002, the Tribunal stated thus in para 5 of its appellate order :

> "It is further contended that the extended period of limitation invoked in the show cause notice is not available to the department. None of the grounds of appeal raises, specifically or in general terms, the question of limitation. We are not able to find this ground in any of the 18 grounds in the appeal. We have therefore declined to hear the representative of the appellants on limitation. In the result, we find no ground for interference."

4. Mr. Mihir Joshi, learned advocate appearing on behalf of the petitioners, submitted that the Tribunal has adopted a hyper-technical approach while dealing with the issue of limitation, and has failed to consider that the very same Tribunal had taken into consideration this issue to be a prima facie ground for granting stay against requirement of pre-deposit. It was submitted that in response to show-cause notice dated 11th November 1994, the petitioners had specifically raised the issue regarding extended period of limitation not being available to the department and this aspect has also been taken into consideration while passing the adjudication order. In these circumstances, it was submitted that the Tribunal committed an error while observing as it did in para 5 of the appellate order.

5. Mr. D.N. Patel, learned Senior Standing Counsel

for the Central Government appearing on behalf of the respondents, submitted that once the Tribunal had arrived at a decision on merits that there was the case of non-declaration or faulty declaration, the Tribunal was justified in holding that the extended period of limitation was not available to the assessee; that instead of recording such a finding, the Tribunal had taken into consideration that the ground regarding limitation had not been raised by the assessee before it and hence they declined to hear the representative of the assessee on the said issue.

6. It is apparent that the approach of the Tribunal in relation to the observations made in para 5 reproduced hereinbefore is not warranted in law. The aspect of limitation is, though based on facts, an issue of law which should be permitted to be raised and dealt with on merits. The Tribunal itself, having accepted the aspect of limitation as a prima facie ground for staying the requirement of the pre-deposit, ought not to have been hyper-technical while deciding the appeal. In fact, as the facts go to show right from inception, namely, the stage of show-cause notice and reply thereto, the assessee has been raising this aspect as one of its basic defences.

7. In light of these circumstances, para 5 of the order dated 10.1.2002 is quashed and set aside. The appeal is restored to the file of the Tribunal for the limited purpose of deciding the issue regarding availability or otherwise of extended period of limitation. The Tribunal shall, after hearing both the sides on this aspect, pass the necessary order within a period of six weeks from the date of receipt of the writ or a certified copy of this order, whichever is earlier.

8. We may make it clear that we have not gone into any other aspect of the matter as the ground of limitation is a preliminary issue which requires to be decided at the threshold.

The petition stands allowed accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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